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## P R O C E E D I N G S

THE CLERK: This is the case of *Singular Computing LLC* versus *Google LLC*, Civil Action Number 19-12551, which will now be heard before this Court.

Would counsel please identify themselves for the record.

MR. HAYES: Paul Hayes, Prince Lobel, for the plaintiff.

THE COURT: Good afternoon.

MS. SHAH: Your Honor, this is Deeva Shah from Keker Van Nest & Peters for defendant, Google.

THE COURT: And good afternoon to you.

MS. SHAH: Good afternoon.

THE COURT: All right. Okay. So first I start with a question -- possibly a hopeful question. But when I was reading the parties' papers, it seemed that both sides sort of suggested this was an issue that could have been benefited or maybe could benefit from more conversation between the parties. And so -- and I note this was -- the motion to compel was filed back in mid-November.

So let me just ask. Since then have any of the issues been narrowed or resolved or affected by any subsequent conversations between the parties?

MR. HAYES: Your Honor, for the plaintiff, the answer is simply no.

1 THE COURT: Okay.

2 MS. SHAH: Your Honor, we've heard nothing further in  
3 terms of the last offer that we provided.

4 THE COURT: Okay. Well, all right. So let's begin  
5 there. And to Singular, maybe you can just help me understand  
6 what the issue here is. I understand what Google is offering  
7 here, and they say, look, we can give you some nonfunctional or  
8 nonoperational devices on a board so you can see what this  
9 looks like, and we can also give you access to a program so you  
10 can run simulations.

11 So one question I have for you is what's wrong with  
12 that? And then I have sort of a related question, which is,  
13 well, if you get copies of the devices and nothing more, so  
14 none of the cooling equipment that they say is necessary or the  
15 power source that you would need to run this, would you be  
16 content with just getting copies of the devices and nothing  
17 more?

18 MR. HAYES: From our point of view, Judge, we would be  
19 content in getting copies of the boards. There's two of them,  
20 B1 and B2 --

21 THE COURT: Right.

22 MR. HAYES: -- as they are used by Google in their  
23 environment. Now, obviously if they have a cooling system  
24 that's hooked up to it, so be it, then I don't want the cooling  
25 system. But the reason we need the board with all the stuff in

1 it, the chip, et cetera, is in Google's brief they said, well,  
2 they don't sell boards, but this is -- this case here is  
3 infringement based on use; it's not based on sale.

4 And obviously what I want to do is take a look at the  
5 board, have my expert take a look at the board, and I want to  
6 show the jury the board with the chip. And I don't want any  
7 notion of my expert examining a board that effectively was  
8 never used. That's what they're -- they don't want to give me  
9 the chip.

10 And then -- so, I mean, my position is real simple.  
11 They're obligated to give it. They agreed to give it by the by  
12 and then they reneged. After they agreed to give it, told  
13 Judge Saylor they'd give it to me, I gave them something in  
14 return, which we did, and then they reneged on it two days  
15 later. So I don't need the cooling apparatus, but I certainly  
16 need the accused board, which, by the way, obviously will fit  
17 in a briefcase. So there's no reason not to do it. And we  
18 have a pretty draconian, what do you call, protective order --

19 THE COURT: Right.

20 MR. HAYES: -- protecting all this stuff. So, I mean,  
21 there's really no excuse not to give it to me.

22 THE COURT: So, Ms. Shah, we've got a local rule that  
23 says you have got to give this unless it's impractical. You  
24 say it's impractical, but what we're hearing is, look, we don't  
25 want the rest of the universe that goes along with this. We

1 want just the small part that can fit in a banker's box.  
2 That's the term everyone is using. I have to say, I never  
3 really know what a banker's box looks like, but I'm imaging  
4 it's not huge. So there's an argument that it's not  
5 impractical, and so, therefore, the rules should govern. And  
6 on top of that we've got a draconian protective order here in  
7 place that would, you know, protect the proprietary concerns or  
8 any of the other concerns regarding the disclosure of sensitive  
9 material. So what's the big deal?

10 MS. SHAH: So, Your Honor, if I can answer that  
11 question in two parts. I'll start first with the local rule.  
12 We don't think that the local rule simply allows for Singular  
13 to define this product as some broad TPU board and also compel  
14 production of something that wouldn't be an exemplary product.

15 Singular focuses on Section (d) (4) (B), but what  
16 (d) (2) (B) says specifically is it must be an exemplary product  
17 or an exemplary sample, and here in this case, a nonworking TPU  
18 board or chip is not exemplary because if Your Honor looks at  
19 the complaint, looks at the infringement contentions, what's  
20 relevant is the non -- is the operation that's run on chips,  
21 not the architecture of the board or the chip itself. This  
22 case isn't about chip architecture or how things are arranged,  
23 and therefore, even under Singular's own stated purposes for  
24 why they need this sample, an exemplary sample would be able to  
25 run test code, otherwise it's simply not relevant.

1 THE COURT: Why can't they? Why can't they do that?

2 MS. SHAH: Well, the TPU chip is inside of a board  
3 that's in Google's data centers, and these -- what's required  
4 in order to run them is not just this cooling equipment but  
5 also they're coded specifically to Google's phone servers and  
6 to Google's software. And so without all of those things --  
7 and also, I think of significantly a large power supply, I  
8 don't believe the TPU board, as far as we've been told from  
9 engineering, can run outside of that setup.

10 THE COURT: Hang on for one second. So let's put  
11 aside the power source for a minute.

12 Mr. Hayes, to the extent that Ms. Shah is talking  
13 about these other aspects that would need to be included that  
14 you are not going to have, what do you say to that?

15 MR. HAYES: Well, I mean, that's fine, Judge. What  
16 you have to understand with her argument, first of all, is  
17 what's the accused product is the board. What is not accused  
18 is the chip. It's the board. That's spelled out in the brief  
19 or it's spelled out in the complaint. Its spelled out  
20 everywhere. So effectively we need the board. We need the  
21 board to test it in a variety of ways, not just simply to plug  
22 it into the cooling system and all the rest.

23 They've offered -- we need, in addition -- and  
24 hopefully after we go through all this, I don't have to come  
25 back to get their source code. But, I mean, I'm starting -- I

1 started this whole process in October to try to get this thing,  
2 but I just need the board. I mean, this is the accused  
3 product. This is what they used in their device. And the fact  
4 that it doesn't have the cooling system, so be it. I'll live  
5 with it.

6 THE COURT: And so the source code is not on the  
7 board. Is that something that would have to be provided in  
8 addition to?

9 MR. HAYES: The source code, Judge, is in the --  
10 embedded with the -- embedded in the chip. But they've already  
11 seen the source code that's in the chip, but you're not -- and  
12 they've offered to test somehow this, but that's a different  
13 ball of wax. I mean, I just need the physical product, and  
14 there's no -- I mean, under the rule there is no, as I can see  
15 it, no legitimate reason other than they just don't want to  
16 give it to me.

17 THE COURT: No, no, no. That I understand. What I'm  
18 trying to understand, just as a factual matter, and Ms. Shah  
19 appeared to be -- or I interpreted what you were saying to  
20 mean, getting the board without anything more isn't going to  
21 allow you to do what you want to do, and that's aside -- that's  
22 independent of the cooling, independent of the power. There  
23 are other things that you are going to need from us in order to  
24 do what you want to do.

25 MR. HAYES: Right, in addition to that, but I assume,



1 once this is worked out, we'll be able to get that. Your  
2 Honor, there is a whole bunch of things that we will do with  
3 the board just as is. And Brian Seeve is our computer guru at  
4 Prince here, who -- I don't know what he's going to do. Paint  
5 it and play frisbee with it.

6 Brian, why don't you tell the Judge what we'll do with  
7 the board just as is.

8 THE COURT: Well, hang on. Before you do that -- hang  
9 on. Hang on. Let me go incrementally here. I want to make  
10 sure I understand exactly what you're seeking to compel the  
11 production of. You are just seeking to compel the production  
12 of the board which will have the chip which will have the  
13 source code embedded in it?

14 MR. HAYES: Correct.

15 THE COURT: Not seeking anything more through the  
16 motion to compel; is that correct or is that incorrect?

17 MR. HAYES: That's correct.

18 THE COURT: Okay. Now, Ms. Shah --

19 MR. SEEVE: Your Honor --

20 THE COURT: Hang on, Mr. Seeve.

21 -- are you saying if they get that it still is not  
22 going to work, they still are not going to be able to use it  
23 for anything, there is still things independent of the cooling  
24 component and the power component that they will need from  
25 Google? Because if the answer to that is yes, then obviously

1 that needs to be talked about in the context of this motion.

2 So what else are you saying they would need? Because they may  
3 disagree with you. You know, they may say, look, that's our  
4 problem, not yours.

5 What else are you saying they would need to make this  
6 something that wouldn't just be a futile exercise?

7 MS. SHAH: Well, Your Honor, what else -- I know that  
8 they would need dedicated servers. The board is coded to  
9 Google-specific servers, and so those servers are also within  
10 Google's data centers.

11 THE COURT: So you are saying, look, if you don't like  
12 our offer of giving you access to something on the cloud where  
13 you can run simulations and giving you a board that you can  
14 kind of just look at, you have to do this in one of our data  
15 centers or else that board, that piece of hardware that you  
16 have got is useless; is that what you are saying?

17 MS. SHAH: No, Your Honor. I think actually even  
18 going to our data centers wouldn't allow them to test at the  
19 data center. Even Google's own engineers test this code  
20 virtually through the same cloud TPU portal that we're offering  
21 Singular to do the testing from.

22 The testing for -- it's why the architecture here  
23 isn't in fact relevant because the testing all happens off site  
24 virtually. Going to a data center, having the chip in hand or  
25 the board in hand simply wouldn't allow for the kind of testing

1     that I believe Singular has at least told us thus far is their  
2     stated purpose for seeking this board.

3             THE COURT:   Okay.   So if they don't need the data  
4     center -- I don't mean this to sound flippant -- so then what  
5     do you care that they want a copy of the board that the local  
6     rule appears to entitle them to?

7             MS. SHAH:   Well, Your Honor, I think -- we have two  
8     concerns here, and first was what I mentioned.   We don't  
9     actually think the local rule says that they just get whatever  
10    it is that they have now decided is the accused product.   It's  
11    not what they've claimed before as the accused product.

12            But, second, we have a concern here under the  
13    protective order that hasn't been addressed, and we weren't  
14    able to address it because the first time that counsel brought  
15    up this argument was in reply, that they intend to disassemble  
16    this board and that they intend to take it apart.   And the  
17    issue here is not only does the protective order not cover  
18    disassembly, it also doesn't cover the storage or inspection of  
19    any physical specimen.   It simply does not have the safeguards  
20    in place which are particularly important because this isn't  
21    commercially available and this really isn't relevant.   There  
22    are no portions of the architecture that are relevant to the  
23    claim.

24            THE COURT:   Okay.   You are mixing, though, at this  
25    point, two different objections, the latter being relevance;

1 the first being you think they'd be violating the protective  
2 order. Let's try to keep these separate for the moment. I'm  
3 still -- I mean, I'll hear from Mr. Seeve, because clearly he  
4 wants to tell me things. But I have to tell you, you know, the  
5 part I'm having issues with right now is it's your position  
6 that the local rules don't seem to provide for this to be  
7 disclosed to the plaintiff. But I'll hear more on that in a  
8 minute after Mr. Seeve enlightens us.

9 MR. SEEVE: I apologize, Your Honor. Further, I was  
10 trying to clarify one thing, which is that this is an issue  
11 that's independent of the source code. The source code is not  
12 going to be on the board, and we don't expect it to be on the  
13 board.

14 THE COURT: Okay. Okay.

15 MR. SEEVE: That's all I wanted to clarify. As to  
16 what we would use --

17 THE COURT: All right. So maybe as part of your --  
18 what you are going to be telling me then, you can help me, and  
19 I think this is what Mr. Hayes wanted to do, you can walk me  
20 through what is it that you want to do with this, and help  
21 Ms. Shah understand why you getting the sample board that you  
22 are looking for is going to be sufficient.

23 MR. SEEVE: So it's definitely possible to make  
24 various inferences about how a product works, how a particular  
25 chip works just by looking at it. You don't need to run it.

1 You don't need to have the cooling system or the software or  
2 all of the environment that you need to actually operate the  
3 chip in the manner intended. Sometimes you just need a  
4 magnifying glass. Or, you know, you just need to look at where  
5 the components are relative to each other. And just with like  
6 a cursory examination like that, you can learn important things  
7 about how a product works.

8 There are tools that don't disassemble, that don't  
9 harm boards like this but that can sort of look inside them, to  
10 an extent possible, to shine light at them and then see how  
11 translucent they are, and other physical properties of the chip  
12 that may well be relevant to infringement in this case.

13 And I think, you know, the final answer is mostly that  
14 we don't know. You know, as Ms. Shah pointed out, this is a  
15 board that's not commercially available. This is a board that  
16 only Google pretty much ever -- has ever seen. And maybe  
17 Google theoretically could be right, that we won't learn  
18 anything useful from the board. We don't know. But we have no  
19 reason to believe that, and we hesitate to think that we should  
20 take Google's word for that when there's really no harm that  
21 could arise from just getting one or two of these sample boards  
22 and examining it in the way I just described.

23 THE COURT: One of the things Ms. Shah just talked  
24 about is them learning that you plan to do some things with it  
25 that may violate the protective order. So I assume the concern

1 is you will learn some things that you shouldn't be learning if  
2 you take it apart and start doing things. I mean, do you have  
3 any thoughts on that or is that something that you and  
4 Mr. Hayes have thought about?

5 MR. SEEVE: The parties have discussed that issue. I  
6 can speak to my own memory, which is that Google was concerned  
7 that any kind of analysis that involved third parties that we  
8 performed on the board, that might expose the secrets of their  
9 engineering to an overbroad audience and we wouldn't be able to  
10 sort of keep that kind of thing secret. You know, there's a  
11 very small number of people that do this kind of analysis, and  
12 I think they were worried that this information falling into  
13 the wrong hands could spread quickly.

14 In response, we very clearly agreed that we would not  
15 give this board to third parties as part of our analysis, that  
16 we would not let anyone who's outside the protective order in  
17 any way have any kind of access to the board. We're surprised  
18 to hear that this issue is coming up again now because we  
19 thought, and I think confirmed in writing, that there was an  
20 agreement between the parties that no such actions would be  
21 taken.

22 THE COURT: Okay. Ms. Shah?

23 MS. SHAH: Your Honor, I have two concerns here, and  
24 first is that to the extent that Mr. Seeve contends that there  
25 might be inferences that they could make about the chip by

1 simply looking at it, we've not only provided the chip design  
2 code but we've provided the specifications that give far more  
3 information than anything that would be visible by looking at  
4 the chip. They have all the specifications of how this chip is  
5 set up and how it functions and what parts are next to which  
6 specific parts that we're not even sure would be relevant. To  
7 the extent that they are concerned about that, they have the  
8 ability and have been able to look at that information since  
9 our production in October. We're just not sure at this point  
10 what information they need that they don't already have that  
11 would require looking at the chip.

12           Moreover, with regard to this argument that we've  
13 discussed not turning over the chip to third parties, we hadn't  
14 talked about disassembly, and we don't believe that disassembly  
15 is something that can occur without the involvement of a third  
16 party for this kind of board or chip. And there's also --

17           THE COURT: Hang on. Hang on. You say that you don't  
18 think that can happen. You've got the plaintiffs right here.  
19 Let's have them comment on it.

20           MS. SHAH: Sure.

21           THE COURT: Mr. Seeve, a moment ago you just said your  
22 analysis would not involve a third party. Google has concerns  
23 that you can't disassemble and do the sort of analysis you want  
24 to do without involving a third party. So how unequivocal can  
25 you be that getting this board and doing what you want to do to

1 it is something that can be accomplished in house, so to speak,  
2 without involving third parties?

3 MR. SEEVE: When it comes to third parties, I can be  
4 totally unequivocal. We have no intention of giving any third  
5 party access to the sample board, period.

6 As to how much we can learn from the board, again, we  
7 don't know, which is one of the reasons we're seeking the board  
8 in the first place.

9 Disassembly is a word that can mean a lot of things.  
10 It can mean unscrewing a component and peering under it or it  
11 can mean putting the component under an electron microscope and  
12 taking tiny slices of it. I mean, there's a whole range of  
13 stuff that that word could comprise. Could we unscrew a  
14 component from the board? Maybe. I don't know because we  
15 haven't seen the board. That might be useful. We probably  
16 could not put it under an electron microscope. We don't have  
17 one of those lying around the firm.

18 THE COURT: Okay. So, Ms. Shah, I guess -- you know,  
19 obviously whenever we have a hearing we go back and we reread  
20 everything and we talk about it, but I'm still kind of  
21 struggling to figure out what's the big deal here. I know  
22 we've got -- we'll have to look at two aspects of the local  
23 rules. But there is a provision that does seem to contemplate  
24 that in a case like this samples should be provided of the  
25 accused infringing product. And, at least spiritually, it



1 would seem the rules would be calling for Google to make this  
2 available. And then to the extent you say, look, you're going  
3 to have trouble doing much without certain hardware and  
4 components, that's their issue. You know, the chip apparently  
5 is a nonissue. And possible issues with respect to violation  
6 of the protective order is a concern, but they say you don't  
7 have to worry here. We're not going to be involving third  
8 parties.

9 So, again, I'll go back and look, but I'm having a  
10 hard time trying to understand where Google's main problem with  
11 this is.

12 MS. SHAH: Your Honor, I'll start first with the  
13 protective order, and I want to be clear, there's a third party  
14 in terms of what Singular is intending to do here, including  
15 naming a chip manufacturer or a chip disassembler as a third  
16 party expert. If they intend to name that individual as an  
17 expert under the protective order, then it would effectively  
18 circumvent the exact concerns here that we're bringing up about  
19 providing information that may not be relevant to this case.

20 THE COURT: Well, I have not looked at the protective  
21 order. I don't know what it says. You know, obviously an  
22 expert that's retained by a party is kind of viewed as being  
23 the party. So I don't know sort of what line becomes an  
24 independent entity that we can call the third party --

25 MS. SHAH: Sure.

1 THE COURT: -- as opposed to their expert. And I  
2 don't know if you're trying to suggest in an -- in your way  
3 that anybody they bring in from the outside, any professional  
4 should be deemed to be a third party.

5 MS. SHAH: No, Your Honor. I just want to clarify  
6 that to the extent that they would be providing this to an  
7 expert, it would be someone who -- or someone that they would  
8 label as an expert, it would be under the procedures available  
9 in the protective order for disclosing an expert prior to  
10 providing something that would be of course marked highly  
11 confidential and attorneys' eyes only.

12 THE COURT: Well, clearly by raising it here in this  
13 context, it's on the radar. And, again, we've got the  
14 plaintiff saying they recognize that being a concern and they  
15 don't intend to try to be cute to do anything to circumvent  
16 that. I mean, that's what I'm hearing them to be saying. And  
17 if ever anything were to happen, there is no doubt you've  
18 raised this as a concern now. Nobody can later come back and  
19 say we didn't know this was a potential issue.

20 MS. SHAH: Understood, Your Honor.

21 And with regard to -- I have one other point on the  
22 protective order, so I'll start there, but then I would like to  
23 address your question about overall the local rules and what  
24 they say.

25 On the protective order even our requirements for

1 source code are more significant than the requirements that  
2 currently exist for physical specimens, such as these boards or  
3 chips. And it's unclear to me why they would need the entire  
4 board because I believe it's the chip at most that would be at  
5 issue, and so we'd ask whether the chip would be sufficient  
6 here instead of the entire board but also --

7 THE COURT: Isn't that something that's actually -- I  
8 don't mean to cut you off. I just thought that was something  
9 the parties pretty much made clear. Plaintiff says no, it's  
10 the board. It's not just the chip. And they say -- you know,  
11 I don't have the stuff in front of me -- but they say, look,  
12 it's been clear that we have viewed that as the infringing  
13 product all along, not just the chip. So if that's the  
14 issue -- I'll go back and I'll look, but I'm not sure it favors  
15 you here when they have made it pretty clear what their concern  
16 is.

17 MS. SHAH: Your Honor, they only provided the first  
18 page of their infringement contentions. However, the remaining  
19 pages of the infringement contentions only refer to the TPU  
20 chips and the core. We provided that along with the Kamber  
21 declaration, and we believe that it's the chip or the core  
22 that's actually at issue here, not the board entirely, which is  
23 not something I believe is made apparent by only that first  
24 page.

25 THE COURT: Okay.

1 MR. HAYES: Your Honor?

2 THE COURT: Go ahead, Mr. Hayes.

3 MR. HAYES: Your Honor, if I could just address that  
4 because it seems to be a mantra. What is accused of  
5 infringement in this case are the two boards. We gave you the  
6 brief. I gave you the complaint. I gave you the allegations  
7 in the complaint, the denial, et cetera. That's it.

8 The claim, if you look at the claim of the patent,  
9 that calls for a device, not a chip, a device. The claim, the  
10 patent describes it including a processor endeavor, to wit a  
11 computer. That is exactly what my guy built. That's exactly  
12 what they gave to Google and Google knocked off. So that's  
13 what the subject of the case is. They want it to be the chip  
14 but it isn't.

15 So, I mean, at least as a plaintiff I certainly get to  
16 nominate what I think is the infringing product, not Google.  
17 So for that argument, I mean, I just think that's it, Judge. I  
18 want to just make that entirely clear, that that's the accused  
19 product, that's what we are going to show to the jury, that's  
20 what we're going -- and another thing, I know when we do tests  
21 or whatever we do on this board, but I want it to make -- I  
22 want it as a pilot to make a demonstrative of the actual board  
23 with the chip and the whole thing for the jury to see, not a  
24 hodgepodge that she may give to me and on cross say, well,  
25 there's a chip there that actually does it in the board that

1 Mr. Hayes showed you? No. Boom, there we go. Now we have  
2 motions in limine and who knows what happens. I mean, I don't  
3 understand what the problem is of just giving me the board.  
4 They have got like a million of these.

5 THE COURT: So, Mr. Hayes, let me ask you this -- this  
6 is the question I sort of asked at the beginning, but it's apt  
7 to ask it again. If you get what you're asking for, so if you  
8 get a copy of the two boards at issue with nothing more,  
9 including no longer the offer of access to a program where you  
10 can run simulations, are you fine with that?

11 MR. HAYES: No, not at all.

12 THE COURT: So what in addition --

13 MR. HAYES: They offered for us to allow to test the  
14 product, right, in vis-a-vis the cloud portal or whatever. And  
15 we in the brief accepted that, but that does not then preclude  
16 me from showing the jury what the accused product is and  
17 photographing it and all the rest.

18 THE COURT: I understand that. That's not my  
19 question. My question -- I just want to make sure if I were to  
20 allow your motion and compel what it is you are seeking, are  
21 you just seeking that they provide you with copies of the  
22 boards with the chips or are you also saying and I want you to  
23 compel them to continue to offer us this access to --

24 MR. HAYES: No, no. The motion is solely with respect  
25 to the board that's before the Court.

1 THE COURT: Okay.

2 MR. HAYES: I assume that once that's decided that  
3 they will -- everybody will sort of get along a little better  
4 and move on, but I mean, that's the motion. That's all before  
5 you right now, Judge.

6 THE COURT: Okay. Thank you. All right. So,  
7 Ms. Shah, back to you to comment on that.

8 MS. SHAH: Your Honor, I think we're in agreement that  
9 this motion is only about the board and not about the offer  
10 that we believe Singular has rejected but we're not sure really  
11 at this point because we really didn't get a response about it.  
12 But to the extent that we believe that if this Court orders us  
13 to provide the boards, this motion to compel only covers the  
14 boards, and to that extent we would ask the Court to implement  
15 either similar requirements to the protective order that cover  
16 the board, so inspection occurring in a controlled environment  
17 similar to source code, since we believe this would be akin to  
18 source code.

19 THE COURT: Why would I have to implement something  
20 special? Doesn't the protective order already apply to the  
21 case writ large such that any discovery would be subject to any  
22 aspect of the protective order that would relate to the  
23 treatment of discovery or materials provided by one side to the  
24 other?

25 MS. SHAH: Your Honor, both Rule 16 and the protective

1 order allow for further procedures to -- it's specific to  
2 whatever element of discovery we're discussing here. And the  
3 protective order actually does not involve any discussion of  
4 physical specimens of this kind. That simply wasn't  
5 contemplated when the protective order was being drafted, and  
6 so even --

7 THE COURT: Well, let me just stop you there because  
8 ten minutes ago you said it would violate the protective order.  
9 So now I hear you saying the protective order doesn't address  
10 it. So help me understand there what the problem is.

11 MS. SHAH: Yes, Your Honor. The violation was with  
12 regard to the third-party concern that we had, which does not  
13 appear to be a concern anymore.

14 THE COURT: Okay.

15 MS. SHAH: Separately, our concern is that the  
16 protective order does not specifically talk about how samples  
17 will be kept, in what location, whether inspection will occur  
18 in a controlled environment. In the same way that source code  
19 has its own provision in the protective order, we would ask  
20 that either the parties be allowed to confer and amend the  
21 protective order to cover physical specimens such as the boards  
22 or that Your Honor provide further guidance in your order.

23 THE COURT: You think way too highly of me if you  
24 think that I can offer you words that will address that. I  
25 mean, you guys are in the best position to understand what

1 really are the concerns here if this sort of material is  
2 provided.

3 So Mr. Hayes and Mr. Seeve, I have got you guys here.  
4 That aspect of it seems reasonable, which is I can compel the  
5 production of it, but at the same time everybody should have a  
6 comfort level that this material is going to be handled  
7 appropriately.

8 So we have got a protective order that may not address  
9 how to handle material like this. I don't know whether it's  
10 better to have an understanding between counsel through written  
11 communications or to amend and supplement the protective order.  
12 But Mr. Hayes or Mr. Seeve, do you have any thoughts about  
13 that?

14 MR. HAYES: I do, Your Honor. That's going to  
15 cause -- we're agreeable, as we said, not to send it to a third  
16 party. But what my -- what my opponent -- I was going to call  
17 her my brother but unfortunately she's my sister. In that  
18 sense, what she's trying to do is to make it such that the only  
19 way we're going to get these boards is we fly out to  
20 California, and we have to inspect them and touch them only  
21 there. That's not -- you do that with source code, and  
22 everybody was happy doing it. You don't go with physical  
23 objects.

24 I need that board in house at Prince to photograph, to  
25 make the demonstratives of it, all of that, and I don't need to



1 get permission from my opponent as to what I'm going to do. I  
2 mean, I don't need to give her all the exhibits before we even  
3 get to the trial. So, I mean, I think in my view, it should be  
4 ordered to be produced, and the caveat that you should probably  
5 put in your order so that everybody is happy is that where the  
6 parties are agreeable that in fact it's not going to be sent  
7 out to a third party to cut up. That's it.

8 The rest is just another delay because if you just  
9 ordered it regular, subject to this protective order thing,  
10 it's going to take me six more months to get it, three months  
11 of negotiating the protective order, coming back to you and  
12 we'll be back here, and by that time discovery is over and  
13 we're done, and that's exactly the Google way. So I can't do  
14 that.

15 MS. SHAH: May I respond?

16 THE COURT: Ms. Shah, were you in your own way  
17 suggesting or trying to get to a point where they'd have to go  
18 all the way out to California and examine this in a controlled  
19 environment of your own choosing?

20 MS. SHAH: No, Your Honor. In fact, even with the  
21 source code, as Singular is aware, we've allowed them to  
22 inspect it at Wolf Greenfield's offices there in Boston. We  
23 understand that there's a pandemic going on. We would not  
24 require them to come to California. Ideally, we would prefer  
25 that the controlled environment would be at Wolf Greenfield,

1 but if that's not amenable, we would at least want assurances  
2 that the controlled environment that they have at Prince Lobel  
3 is secure and perhaps some knowledge of what kind of security  
4 is in place to ensure that this noncommercially available  
5 proprietary material is kept safe.

6 THE COURT: Again, I'm not sure -- I mean, that's --  
7 that may be a valid concern. I'm not sure, you know, it  
8 applies to the issue we're dealing with here today. And I  
9 don't hear you saying, yeah, they're not going to get a copy of  
10 this that they can possess and keep themselves, and so that  
11 doesn't seem to be an issue. So -- well, here's I guess what I  
12 would ask is -- I mean, I'm just musing at this point. But if  
13 you think there's language -- we're not talking about amending  
14 the protective order, but if there's language that you think if  
15 I were going to compel the production of these boards to  
16 Singular that should accompany it so that they and anybody else  
17 would understand -- well, I'm not sure how to complete that  
18 sentence, but basically know of what you can't do with it in  
19 broad terms. I'm not talking about microscripting because you  
20 don't know everything they are going to do, and they are not  
21 going to tell you.

22 MS. SHAH: Yes, Your Honor.

23 THE COURT: But, for example, we know that sharing  
24 information with an outside third party is of concern, and we  
25 have got a protective order that generally talks about that.

1 If you think there's other stuff, broadly speaking, that should  
2 be in there, just so everybody is on notice, I suppose you can  
3 make that known, and I can consider putting it in the order.  
4 But right now my inclination is to order Google to produce  
5 these boards to the plaintiff. And I think that, generally  
6 speaking, the rules don't contemplate the Court playing this  
7 continuing referee, looking over the shoulder of them, to make  
8 sure they're handling it okay.

9 I think there's a presumption that unless there is a  
10 problem, it is being handled appropriately. So I'm not -- I'm  
11 still toying with this idea. I'm really thinking that there's  
12 something big picture that you think -- for example, a concept  
13 that's in the protective order that you think by analogy should  
14 carry over to the treatment of these boards and you have a view  
15 that the boards themselves are not really reflected in the  
16 protective order, then that's something to consider, but  
17 otherwise, I'm loath to kind of start rewriting what parties  
18 can do with materials once they've received them through  
19 discovery. I think that's in your domain. All right.

20 MS. SHAH: Would it be all right to provide the Court  
21 with proposed language perhaps by the end of this week that --

22 THE COURT: Yes, that's fine, understanding I may  
23 choose to, you know, ignore it. I may choose to think about  
24 it. I may choose to include some. And if I think I'm -- I  
25 might include some, what I'll do very quickly is let the

1 plaintiff know I'm thinking of incorporating this or including  
2 this and letting them comment, and then with that I can  
3 finalize the order. But you should presume otherwise the  
4 motion to compel is allowed and the order will follow once I  
5 hear from you and proceed accordingly.

6 MS. SHAH: Yes, Your Honor. Understood.

7 THE COURT: Okay. All right. Now, I know, aside from  
8 that, Google itself just filed a motion to compel. That has  
9 not been fully briefed and so that is not something we're going  
10 to address today, and I don't assume the parties are prepared  
11 to address that today.

12 So with that, is there anything else from Singular  
13 that you think we should be addressing before --

14 MR. HAYES: Nothing, Judge. I just apologize for not  
15 having a tie on. I didn't know it was a Zoom -- a video Zoom,  
16 but other than that, nothing.

17 THE COURT: Well, you kind of outed yourself. Because  
18 you are wearing all black, I can't tell whether you have a  
19 black suit, black shirt, and black tie, which is what I  
20 presumed. I didn't know otherwise, and the transcript will  
21 reflect that.

22 MR. HAYES: We'll leave it at that, Judge. I'll  
23 strike the last comment.

24 THE COURT: Okay. Ms. Shah, anything else before we  
25 recess?

1 MS. SHAH: No, Your Honor. Thank you very much.

2 THE COURT: All right. Thank you, everybody. Stay  
3 safe. And we'll be in recess.

4 (Adjourned at 3:40 p.m.)  
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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Linda Walsh, Registered Professional Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter, to the best of my skill and ability.

9 Dated this 29th day of January, 2021.

10

11

12 /s/ Linda Walsh

13 Linda Walsh, RPR, CRR

14 Official Court Reporter

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